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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,758	06/16/2000	MASANOBU HOKASE	1241.15	4802

7590 10/21/2003

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NEW YORK, NY 10112-3801

EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/581,758

Applicant(s)

HOKASE, MASANOBU

Examiner

Michael V. Meller

Art Unit

1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-3, 7-10, 12 and 13.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_



Michael V. Meller  
Primary Examiner  
Art Unit: 1654

- Continuation of 2. NOTE: the language, "of treating a lactating ruminant the milk of which contains a concentration of somatic cells that is symptomatic of mastitis", "in an amount sufficient, and for a time sufficient, to lower the somatic cell concentration of the ruminant's milk to a level that is below that which is symptomatic of mastitis", the new concentrations of somatic cell counts, and the language in new claim 17. Further, the language, "a concentration of somatic cells that is symptomatic of mastitis" has no support in the instant specification.

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons of record. Applicant argues that the references do not teach treating a lactating ruminant the milk of which contains a concentration of somatic cells that is symptomatic of mastitis. This is not well taken since the references do teach to administer to such ruminants the claimed phytase. The phytase is administered to ruminants in the references. In a large herd of animals it is inevitable that some of the cows would have mastitis or in the very least have milk which contains a concentration of somatic cells which is symptomatic of mastitis. Since cows are usually kept in large herds by farmers this would be commonplace to have such animals. Further, the term "symptomatic of mastitis" is such a vague and indefinite term to begin with. There is nothing concrete about it and one of ordinary skill in the art would not know what applicant is contemplating. Does it mean full blown mastitis or simply a somatic count which "could be" mastitis .